IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE GODA RAGHURAM
WRIT PETITION NO : 9748 of 1996

Between:
S. Burhanuddin, Son of Hassan Saheb, Muslim, Retired Commercial Tax Officer, Hindupur, Ananthapur Dist.

..... PETITIONER

AND

1 The Deputy Commissioner of Commercial Taxes, Kurnool,
2 The Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad.
3 The Government of Andhra Pradesh, rep. by its Secretary, Revenue Department, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ, order or Direction declaring G.O.Ms.No. 841 Revenue (SS) Department, dt. 19th July, 1985 as illegal and consequently direct the Respondents to treat the petitioner as continued in service without any break and without any punishment and grant him all consequential benefits including arrears of salary and fixation of pension.

Counsel for the Petitioner: MR.G.PRABHAKAR RAO

Counsel for the Respondent Nos. 1 to 3.: GP FOR REVENUE

The Court made the following:

(ORAL ORDER):-

The writ petition is directed against the order of the State Government in G.O.Ms.No.841 Revenue (SS) Department dated 19-07-1985 (for short 'the G.O.Ms.No.841').

The writ petitioner retired as an Assistant Commercial Tax Officer, who, while working as such, was prosecuted for alleged possession of assets disproportionate to his known source of income. He was acquitted by the judgment of the learned Court of the Special Judge for ACB Cases, Hyderabad dated 20-01-1981 in C.C.No. 1 of 1978. On his acquittal, disciplinary proceedings were initiated against him, substantially on allegations of possession of properties disproportionate to his known source of income. In addition, he was also charged with not having declared the acquisition of immoveable properties in the annual statement and some other charges.

Eventually, by proceedings dated 21-07-1981, the punishment of stoppage of four increments and treatment of the period of suspension from 18-11-1976 to 29-11-1980 as 'not on duty', was imposed. A departmental appeal was rejected on 03-05-1982. Thereupon, the petitioner filed R.P.No. 1747 of 1982 before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal'). By the judgment dated 22-04-1985, the Tribunal allowed the R.P., set

aside the punishment and concluded that the petitioner should be deemed to be in continuous service, ignoring the punishment.

In accordance with the powers then available under Clause (5) to Article 371(D) of the Constitution of India, the State Government issued the impugned G.O.Ms.No. 841 annulling the judgment of the Tribunal in R.P.No. 1747 of 1982. Assailing the annulment order, R.P.No. 24758 of 1989 was filed before the Tribunal. This petition was rejected by the Tribunal on the ground that the challenge presented was not maintainable before the Tribunal and that the petitioner was required to approach this court for the relief, if he so desires.

A Constitution Bench of the Supreme Court in *P. Samba Murthy and Others Vs. State of A.P.*([1]) has *inter alia* declared as unconstitutional Clause (5) of Article 371(D) of the Constitution of India. As a consequence of such declaration of unconstitutionality on the ground that the provisions violates the basic structure of the Constitution, as per the principles propounded in *Keshavananda Bharathi Vs. State of Kerala* ([2]), the power of annulment available under Article 371 (D)(5) of the Constitution of India must be construed as never having been available.

After institution of this writ petition, the State Government in G.O.Ms.No. 720 Revenue (VIG-I) Department dated 14-09-2004, in recognition of the law consequent on the judgment of the Supreme Court in *P. Samba Murthy (supra)*, has issued orders rescinding the orders in G.O.Ms.No.841 impugned herein. The State also directed that the orders of the Tribunal dated 22-04-1985 in R.P.No. 1747 of 1982 should be implemented by releasing the amounts of increments of the petitioner that were withheld and the period of his suspension be treated as period 'on duty' for all practical purposes under F.R.-- 54-B (3) & (4).

In view of the orders of the State Government in G.O.Ms.No. 720 Revenue (VIG-I) Department dated 14-09-2004, the grievance urged in

this writ petition, does not survive for adjudication. The writ petition is, accordingly, dismissed as infructuous. No costs.

GODA RAGHURAM, J

Dt. 17-09-2004
Pvks/*

To
1 The Deputy Commissioner of Commercial Taxes, Kurnool,
2 The Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad.
3 The Secretary, Revenue Department, The Government of Andhra Pradesh, Secretariat, Hyderabad.
4.2CCs to the Government Pleader for Revenue, A.P. High Court Buildings, Hyderabad (OPUC).
5.2CD copies

*Form-NIC-OGS/WP{**LOBIS**}*

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[1] AIR 1987 SC 663)

[2] AIR 1973 SC 1461 = (1973) 4 SCC 225